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(3) Avocados which fail to meet the maturity requirements specified in this section must be maintained under the supervision of the Federal or Federal-State Inspection Service using the Positive Lot Identification program, and when presented for reinspection, must meet the maturity requirements which correspond to the date of the original inspection.

(b) The term *diameter* means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

[59 FR 30869, June 16, 1994, as amended at 64 FR 53185, Oct. 1, 1999; 71 FR 11294, Mar. 7, 2006; 73 FR 26945, May 12, 2008]

PART 916—NECTARINES GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601-674.

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SOURCE: 23 FR 4616, June 25, 1958, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 916.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may

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hereafter be delegated, to act in his stead.

§916.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§916.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§916.4 Production area.

Production area means the State of California.

§916.5 Nectarines.

Nectarines means: (a) All varieties of nectarines grown in the production area; and

(b) Hybrids grown in the production area that exhibit the characteristics of a nectarine and are subject to cultural practices common to nectarines, as recommended by the committee and approved by the Secretary.

[71 FR 41350, July 21, 2006]

§916.6 Varieties.

Varieties means and includes all classifications or subdivisions of nectarines.

§916.7 Fiscal period.

Fiscal period is synonymous with fiscal year and means the 12-month period beginning on March 1 of one year and ending on the last day of February of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§916.8 Committee.

Committee means the Nectarine Administrative Committee established pursuant to §916.20.

§916.9 Grower.

Grower is synonymous with producer and means any person who produces nectarines for market in fresh form, and who has a proprietary interest therein. Employees of growers and officers of corporations actively engaged

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in growing nectarines are eligible to serve in grower positions on the committee.

[71 FR 41350, July 21, 2006]

§916.10 Handler.

Handler is synonymous with shipper and means any person (except a common or contract carrier transporting nectarines owned by another person) who handles nectarines.

§916.11 Handle.

Handle and *ship* are synonymous and mean to pack, sell, consign, deliver, or transport nectarines, or to cause nectarines to be packed, sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided*, That the term *handle* shall not include the sale of nectarines on the tree, the transportation within the production area of nectarines from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such nectarines to such packing facility for such preparation.

[71 FR 41350, July 21, 2006]

§916.12 District.

District means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to §916.31:

(a) *District 1* shall include the counties of Madera and Fresno.

(b) *District 2* shall include the counties of Kings and Tulare.

(c) *District 3* shall include all of the production area lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino.

(d) *District 4* shall include the counties of Merced, Stanislaus, and the balance of the production area.

[31 FR 8176, June 10, 1966, as amended at 71 FR 41350, July 21, 2006]

§916.13 Pack.

Pack means the specific arrangement, size, weight, count, or grade of a quantity of nectarines in a particular type and size of container, or any combination thereof.

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§ 916.14 Container.

Container means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of nectarines.

§ 916.15 Marketing season.

Marketing season means the period beginning on April 1 and ending on November 30 of any year.

[71 FR 41350, July 21, 2006]

§ 916.16 Pure grower or pure producer.

(a) *Pure grower* means any grower:

(1) Who produces his or her own product (and is not an employee or officer of a packing business); or

(2) Who produces and handles his or her own product; *Provided*, That a pure grower can pack the production of other growers as long as the production packed does not exceed 25 percent of the total production packed for that marketing year for that pure grower's packing facility. Pure grower is synonymous with pure producer.

(b) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

[71 FR 41350, July 21, 2006]

ADMINISTRATIVE BODY

§ 916.20 Establishment and membership.

There is hereby established a Nectarine Administrative Committee consisting of thirteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he/she is an alternate. The members and their alternates shall be growers or authorized employees of growers. Six of the members and their respective alternates shall be growers of nectarines in District 1. Four members and their respective alternates shall be growers of nectarines in District 2; two of the members and their respective alternates shall be growers of nectarines in District 3; and one member and his/her alternate shall be growers of nectarines in District 4; *Provided*, That at least 50% of the nominees from each rep-

resentation area shall be pure growers. Furthermore, no person shall serve more than three consecutive two-year terms of office or a total of six consecutive years; *Provided further*, That an appointment to fill less than a two year term of office, or serving one term as an alternate, shall not be included in determining the three consecutive terms of office; *Provided further*, That time served prior to the effective date of this section shall not be counted toward consecutive term limits.

[71 FR 41350, July 21, 2006]

§ 916.21 Term of office.

The term of office of each member and alternate member of the committee shall be for 2 years beginning on March 1 of an odd numbered year and ending on the last day of February of an odd numbered year. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

[36 FR 9290, May 22, 1971]

§ 916.22 Nomination.

(a) *Initial members*. Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 916.20.

(b) *Successor members*. (1) The committee shall appoint a nominating committee, which will hold or cause to be held, not later than January 31 of each odd numbered year, a nomination

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procedure or a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. Meetings may be supervised by the nominating committee that shall prescribe such procedure as shall be reasonable and fair to all persons concerned. After the nomination procedure or meetings have concluded, the nominating committee by February 15 will verify consent to place the nominee's name on the ballot and will cause a ballot listing all of the nominees for a given district to be mailed to all growers within the district. Members and their alternates will be chosen based on a descending ranking of votes received. Once ballots have been tabulated, the Nectarine Administrative Committee will announce to the growers the nominees that have been selected and recommended to the Secretary.

(2) Nominations may only be by growers, or by duly authorized employees. At meetings, only growers who are present at such nomination meetings may participate in the nomination of nominees for members and their alternates. All known growers will then receive a ballot for the nominees in the district in which they produce and are entitled to vote accordingly. A grower who produces in multiple districts is allowed to vote only in one district, and may exchange his/her ballot for that of the nominees in another district provided the grower is producing in the district for which he/she wants to participate. Employees of such grower shall be eligible for membership as principal or alternate to fill only one position on the committee.

(3) A particular grower, including authorized employees of such grower, shall be eligible for membership as principal or alternate to fill only one position on the committee.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 31 FR 8176, June 10, 1966; 36 FR 9290, May 22, 1971; 71 FR 41350, July 21, 2006]

§916.23 Selection.

From the nominations made pursuant to §916.22, or from other qualified persons, the Secretary shall select the

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members of the committee and an alternate for each such member.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 72 FR 7821, Feb. 21, 2007]

§916.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in §916.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in §916.20.

§916.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

[71 FR 41351, July 21, 2006]

§916.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§916.22 and 916.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in §916.20.

§916.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the

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event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee members present may designate any other alternate to serve in such member's place and stead provided such action is necessary to secure a quorum.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 31 FR 8176, June 10, 1966]

§ 916.30 Powers.

The committee shall have the following powers:

- (a) To administer the provisions of this part in accordance with its terms;
- (b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;
- (c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and
- (d) To recommend to the Secretary amendments to this part.

§ 916.31 Duties.

The committee shall have, among others, the following duties:

- (a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;
- (b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;
- (c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;
- (d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;
- (e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;
- (f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to nectarines;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the Provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in nectarine production within the districts and the production area.

§ 916.32 Procedure.

(a) Nine members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ 916.50 to 916.55, shall require at least nine concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, such as facsimile, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person. A video-conference shall be considered an assembled meeting and all votes shall be considered as cast in person.

[71 FR 41351, July 21, 2006]

§ 916.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided*, That the committee at its discretion may request the attendance of one or more alternates at any

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or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

[31 FR 8177, June 10, 1966]

§916.34 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

EXPENSES AND ASSESSMENTS

§916.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §916.41.

§916.41 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles nectarines during such period shall pay to the committee, upon demand, assessments on all nectarines so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which

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may be incurred. Such increase shall be applied to all nectarines handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes. Furthermore, any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961 as amended at 71 FR 41351, July 21, 2006]

§916.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses, (iii) to defray expenses incurred during any

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period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate; *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH

§ 916.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution and consumption or efficient production of nectarines. Such projects may provide for any form of marketing promotion including paid advertising. The expense of such projects shall be paid by funds collected pursuant to § 916.41.

[36 FR 9290, May 22, 1971]

REGULATIONS

§ 916.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 916.51,

the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of nectarines within the production area;

(2) The expected general quality and size of nectarines in the production area and in other areas;

(3) The expected demand conditions for nectarines in different market outlets;

(4) The expected shipments of nectarines produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of nectarines; and

(8) The type of regulations expected to be recommended during the marketing season.

(b) [Reserved]

§ 916.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of nectarines in the manner provided in § 916.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for nectarines during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 916.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of nectarines whenever he finds, from the recommendations and

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information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of nectarines grown in the production area;

(2) Limit the shipment of nectarines by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of nectarines.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§916.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to §916.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of nectarines in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§916.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§916.41, 916.52, 916.53, and 916.55, and the regula-

tions issued thereunder, handle nectarines (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§916.41, 916.52, 916.53, or 916.55, the handling of nectarines (1) to designated market areas within the State of California; or (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to §916.45), or in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent nectarines handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle nectarines pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the nectarines will not be used for any purpose not authorized by this section.

§916.55 Inspection and certification.

(a) Whenever the handling of any variety of nectarines is regulated pursuant to §916.52, or §916.53, each handler who handles nectarines shall, prior thereto, cause such nectarines to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall not be required for nectarines which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b)

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of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such nectarines. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided*, That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

REPORTS

§ 916.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of nectarines as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, grade, and size of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary

to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the nectarines received and disposed of by him as may be necessary to verify the reports he submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

MISCELLANEOUS PROVISIONS

§ 916.61 Compliance.

Except as provided in this part, no person shall handle nectarines, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle nectarines except in conformity with the provisions of this part and the regulations issued under this part.

§ 916.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall

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be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§916.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in §916.64.

§916.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current marketing season, produced more than 50 percent of the volume of the nectarines which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of March subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to October 1 of the then current fiscal period. Upon recommendation of the committee received not later than December 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to February 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning December 1, 1974, and ending February 15, 1975, to ascertain whether continuance of this part is favored by the

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growers. The Secretary shall conduct such referendum within the same period of every fourth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 31 FR 8177, June 10, 1966; 36 FR 9290, May 22, 1971]

§916.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§916.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this

part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§916.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§916.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§916.69 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§916.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistaken, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§916.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§916.110 Exemptions.

(a) *Waivers.* A handler may handle nectarines without inspection and certification, as prescribed under §916.55, if all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least 2 hours in advance of the time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing on a waiver form to be supplied by the inspection service;

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. This advice may be verbal but it shall be confirmed in writing by the Federal-State Inspection Service by execution of the waiver form on which the handler submitted his written request. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Nectarine Administrative Committee.

(3) The Federal-State Inspection Service furnishes the handler with the number of the waiver which shall cover the nectarines on which inspection is requested;

(4) When instructed to do so, the handler plainly and conspicuously marks one end of each container with the letter “W” and the waiver number supplied by the Federal-State Inspection Service. The letter W and the number shall not be less than one-half inch in height.

(b) *Minimum quantities.* Notwithstanding any other provision of this section, nectarines may be handled without regard to the provisions of §§916.41, 916.52, 916.53, 916.55, and 916.60 under the following conditions:

(1) Such nectarines meet the grade requirements set forth in Article 30 of the Food and Agriculture Code of California.

(2) Such nectarines are for home use and not for resale.

(3) The net weight of such nectarines to any one vehicle during any one day does not exceed 200 pounds.

(4) Such nectarines are handled by the person who produced them; and the

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handling takes place (i) on the premises where grown, (ii) at a packing-house or retail stand nearby which is operated by said handler, or (iii) at a certified farmers market in compliance with section 1392 of the regulations of the California Department of Food and Agriculture: *Provided*, That the exemption for certified farmers markets shall not apply to nectarines sorted out by a handler unless the nectarines are packed in containers clearly and legibly marked to show that the nectarines contained therein are only to be sold at certified farmers markets, and the handler complies with regulations established under §§916.41, 916.52(a)(1), 916.55, and 916.60 except that nectarines may be handled to such markets if the nectarines fail to meet the U.S. No. 1 grade only on account of being soft and overripe.

[31 FR 7474, May 24, 1966, as amended at 41 FR 22071, June 1, 1976; 42 FR 23157, May 6, 1977; 47 FR 30452, July 14, 1982; 49 FR 28541, July 13, 1984; 53 FR 15194, Apr. 28, 1988]

§916.115 Lot stamping.

Except when loaded directly into railway cars, exempted under §916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines marked "CA WELL MAT" or "California Well Matured", and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with §916.55: *Provided*, That pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

[72 FR 18853, Apr. 16, 2007]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .357 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears

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in the Finding Aids section of the printed volume and at www.fdsys.gov.

Subpart—Assessment Rates

§916.234 Assessment rate.

On and after March 1, 2010, an assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines is established for California nectarines.

[75 FR 31279, June 3, 2010]

§916.235 Delinquent assessments.

(a) The Nectarine Administrative Committee shall impose a late payment charge on any assessment that has not been received in the Nectarine Administrative Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be 10 percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the Nectarine Administrative Committee shall impose an interest charge on any assessment payment that has not been received in the committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The interest charge shall be 1.5 percent per month and shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 60 day payment period.

[72 FR 25947, May 8, 2007]

Subpart—Container and Pack Regulation

§916.350 California Nectarine Container and Pack Regulation.

(a) During the period beginning April 1 and ending October 31, no handler shall ship any package or container of any variety of nectarines marked "CA WELL MAT" or "California Well Matured" except in accordance with the following terms and conditions:

(1) Such nectarines, when packed in any closed package or container, except master containers of consumer

packages, individual consumer packages, and five down Euro containers, shall conform to the requirements of standard pack: *Provided*, That nectarines in any such volume-filled container need only be filled to within one-inch of the top of the container.

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the word "nectarines."

(3) Each package or container of nectarines bearing the words "California Well Matured" or "CA WELL MAT" shall be well matured as defined in §916.356.

(4) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the name and address of the shipper.

(5) Each package or container of nectarines, except consumer packages mailed directly to consumers, shall bear, on one outside end in plain sight and in plain letters, the following count and/or size description of the nectarines as applicable.

(i) The size of nectarines packed in molded forms (tray-packs) in the No. 22D and the No. 32 standard lug boxes, experimental containers; or the No. 12B fruit (peach) boxes or flats; and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as "80 count," "88 count," etc.

(ii) The size of nectarines in molded forms (tray-packs) in experimental containers, and in the No. 22G standard lug boxes, shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box, in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with count requirements in paragraph (a)(5)(i) of this section.

(iii) The size of nectarines loose-filled or tight-filled in any container shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D or No. 32 standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(iv) The size of nectarines, when packed in loose-filled or tight-filled containers, shall be marked in accordance with the following table 1 and table 2 which specify the tray-pack size designation in Column A with the corresponding maximum number of nectarines in a 16-pound sample of each size of the fruit in Column B: *Provided*, That the following procedure shall be used in determining whether nectarines meet the minimum size requirements specified for each size category in this section applying the 16-pound sample. A sample consisting of one-half of the specified number of fruit for a particular size category shall be used, provided such sample weighs at least eight pounds. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit shall be used to determine the sample weight. If a sample fails with respect to minimum size requirements on the basis of an 8-pound sample, a 16-pound sample shall be used to determine if the fruit meets the minimum size requirements.

TABLE 1—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES (EXCEPT PEENTO TYPE NECTARINES) PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A— Tray pack size designation	Column B— Maximum number of nectarines in a 16-pound sample applic- able to vari- eties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of §916.356
108	100
96	90
88	84
84	78
80	75
72	68
70	63
64	57
60	53
56	48
54	45
50	42
48	41
44	36
42	34
40	32
36	29

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TABLE 1—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES (EXCEPT PEENTO TYPE NECTARINES) PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS—Continued

Column A— Tray pack size designation	Column B— Maximum number of nectarines in a 16-pound sample appli- cable to vari- eties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356
34	27
32	25
30	23

TABLE 2—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES (EXCEPT PEENTO TYPE NECTARINES) PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A— Tray pack size designation	Column B— Maximum Number of nectarines in a 16-pound sample appli- cable to vari- eties specified in paragraphs (a)(6)(ii) and (a)(9)(ii) of § 916.356
108	92
96	87
88	80
84	76
80	72
72	65
70	62
64	56
60	53
56	47
54	45
50	42
48	41
44	36
42	34
40	32
36	29
34	27
32	25
30	23

TABLE 3—WEIGHT-COUNT STANDARDS FOR PEENTO TYPE NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—tray pack size designation	Column B— maximum number of nectarines in a 16-pound sample
80	140
72	128
70	111
64	99
60	93
56	87
54	80
50	77
48	74
44	70
42	68
40	59
36	53
34	50
32	39
30	32

(6) Each No. 22D standard lug box, No. 22G standard lug box, or No. 32 standard box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words “25 pounds net weight.”

(7) Each No. 22E standard lug box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words *35 pounds net weight*.

(8) Each bulk bin container of loose-filled nectarines shall contain not less than 100 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(9) Each master container when filled with nectarines packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents: *Provided*, That when consumer packages of different sizes of nectarines are contained in a master container, the size description of the contents shall indicate the minimum size contained therein, using the terms “Minimum size 60 and larger,” or “Minimum size 70 and larger,” etc., as applicable.

(ii) The name and address (including zip code) of the shipper.

(10) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of nectarines contained in the package and be marked as specified in paragraph (a)(3) of this section.

(b) As used in this section, "standard pack" and "fairly uniform in size" shall have the same meaning as set forth in the U.S. Standards for Grade of Nectarines (Secs. 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. A No. 12B standard fruit box measures $2\frac{3}{8}$ to $7\frac{1}{8} \times 11\frac{1}{2} \times 16\frac{1}{8}$ inches, a No. 22D standard lug box measures $2\frac{7}{8}$ to $7\frac{1}{8} \times 13\frac{1}{2} \times 16\frac{1}{8}$ inches, a No. 22E standard lug box measures $8\frac{3}{4} \times 13\frac{1}{2} \times 16\frac{1}{8}$ inches, a No. 22G standard lug box measures $7\frac{3}{8}$ to $7\frac{1}{2} \times 13\frac{1}{4} \times 15\frac{7}{8}$ inches, a No. 32 standard box measures $5\frac{3}{4}$ to $7\frac{1}{4} \times 12 \times 19\frac{3}{4}$ inches, a No. 35 standard box measures $3\frac{1}{2}$ to $7\frac{15}{16} \times 15\frac{9}{16}$ to $15\frac{13}{16} \times 23\frac{1}{4}$ to $23\frac{3}{4}$ inches, and a No. 36 standard box measures 5 to $6\frac{1}{2} \times 13\frac{1}{4} \times 17\frac{1}{4}$ inches. All dimensions are given in depth (inside dimensions) by width and by length (outside dimensions). "Individual consumer packages" means packages holding 15 pounds or less net weight of peaches. "Tree ripe" means "tree ripened" and fruit shipped and marked as "tree ripe," "tree ripened," or any similar terms using the words "tree" and "ripe" must meet the minimum California Well Matured standards.

(c) Each container of nectarines in plastic, 12x19 $\frac{3}{4}$ inch reusable and recyclable containers shall meet and bear, on the container lid or on the outside end, all applicable marking requirements under the order.

(d) During the period April 1 through October 31, each container or package when packed with nectarines meeting the "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least $\frac{3}{8}$ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along

with all other required markings, in letters at least $\frac{3}{8}$ inch in height.

[50 FR 39074, Sept. 27, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §916.350, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Subpart—Grade and Size Regulation

§916.356 California Nectarine Grade and Size Regulation.

(a) During the period beginning April 1 and ending October 31, no handler shall ship any package or container of any variety of nectarines marked "CA WELL MAT" or "California Well Matured" except in accordance with the following terms and conditions:

(1) Any lot or package or container of any variety of nectarines shall meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle $\frac{3}{8}$ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle $\frac{1}{2}$ inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That nectarines of the Peento type shall be permitted blossom end cracking that is well healed and does not exceed the aggregate area of a circle $\frac{3}{8}$ inch in diameter, and/or does not exceed a depth that exposes the pit: *Provided further*, That any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are well mature and are:

(i) Free from insect injury which has penetrated or damaged the flesh; split pits which cause an unhealed crack or one or more well healed cracks which, either singly or in the aggregate, are more than $\frac{3}{8}$ inch in length; mold, brown rot, and decay which has affected the edible portion; and

(ii) Free from serious damage due to skin breaks, cuts, growth cracks, bruises, or other causes. Damage to any nectarine is serious when it causes a waste of 10 percent or more, by volume, of the individual nectarine.

(iii) *Tolerances.* Not more than 10 percent, by count, of the nectarines in any one container may be below the requirements which are prescribed by this paragraph, including not more than 5 percent, by count, for any one defect, except split pits. An additional tolerance of 10 percent, by count, of the nectarines in any one container or bulk lot may contain nectarines affected with split pits. This means a total tolerance of 20 percent is allowed for all defects, including split pits, but not to exceed 15 percent for split pits alone.

(iv) The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in table 1 to paragraph (a)(1)(iv) in making maturity determinations for the specified varieties when inspecting to the “well matured” level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Tom Grand variety of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in table 1 to paragraph (a)(1)(iv) may be granted during the season to reflect changes in crop, weather, or other conditions that

would make the specified guides an inappropriate measure of “well matured.”

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
Alta Red	J
April Glo	H
August Fire	L
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Big Jim	J
Burnectone (Spring Ray®)	L
Burnectseven (Summer Flare® 28)	J
Burnectten (Spring Flare® 19)	H
Burnecttwelve (Sweet Flare® 21)	I
Candy Gold	L
Crimson Baby	G
Diamond Bright	J
Diamond Jewel	L
Diamond Ray	L
Earliglo	I
Early Diamond	J
Early Red Jim	J
Early Sungrand	H
Emelia	J
Fairlane	L
Fantasia	J
Firebrite	H
Fire Sweet	J
Flame Glo	L
Flamekist	L
Flaming Red	K
Flavortop	J
Gee Sweet	L
Grand Candy	J
Grand Diamond	L
Grand Sweet	J
Gran Sun	L
Honey Blaze	J
Honey Dew	B*
Honey Fire	L
Honey Kist	I
Honey Royale	J
July Red	L
June Brite	I
June Candy	K
Juneglo	H
Kay Diamond	L
Kay Glo	J
Kay Sweet	J
King Jim	L
Kism Grand	J
Larry's Red	J
Late Le Grand	L
Late Red Jim	J
Mango	B*
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Kist	H
Mid Glo	L
Moon Grand	L
Niagra Grand	H
P-R Red	L
Prince Jim	L
Prince Jim I	L
Prima Diamond VII	L
Prima Diamond XIII	L

TABLE 1—Continued

Column A variety	Column B maturity guide
Prima Diamond XIX	L
Red Delight	I
Red Diamond	L
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Jewel	L
Red Jim	L
Red May	J
Red Roy	J
Regal Red	K
Rio Red	L
Rose Diamond	J
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Fire	G
Ruby Grand	J
Ruby Sun	J
Ruby Sweet	J
Scarlet Red	K
September Bright	J
September Free	J
September Grand	L
September Red	L
Shay Sweet	J
Sheri Red	J
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Spring Sweet	J
Star Brite	J
Sugar Queen	L
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Jewel	L
Summer Lion	L
Summer Red	L
Sunburst	J
Sun Diamond	I
Sunecteight (Super Star)	G
Sun Grand	G
Sunny Red	J
Tom Grand	L
WF 1	J
Zee Fire	J
Zee Glo	J
Zee Grand	I

* Predominant ground color must be breaking yellowish green.

NOTE: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above. On varieties with less than 10 percent surface ground color required to determine California Well-Matured, the stem cavity color will be utilized to make the determination. As a guide, stem cavities for most varieties should be at least yellowish-green as defined by the H maturity guide. Confirmation may be further established by

using other California well matured characteristics. *Predominant ground color must be breaking yellowish green.

(v) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

(2) Any package or container of April Glo variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(2)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 100 nectarines, except for Peento-type nectarines.

(3) Any package or container of Burnectfive (Spring Flare® 21), Burnectten (Spring Flare® 19), Crimson Baby, Earliglo, Honey May, May Pearl™, Polar Ice, Polar Light, Red Jewel or Zee Fire variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(3)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines, except for Peento-type nectarines.

(4) Any package or container of Arctic Star, Burnectone (Spring Ray®), Burnecttwelve (Sweet Flair® 21), Burnectthirteen (Snow Flare® 22), Burnectfourteen (Snow Flare® 21), Diamond Bright, Diamond Pearl, Gee Sweet, Honey Lite, June Pearl, June Sweet, Kay Diamond, Kay Fire, Kay Glo, Kay Sweet, Prima Diamond IV,

Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Roy, Rose Bright, Rose Diamond, Royal Glo, or Zee Grand variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(4)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 84 nectarines, except for Peento-type nectarines.

(5) Any package or container of Mango variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines, except for Peento-type nectarines.

(6) Any package or container of 15G225, 225LP242, Arctic Belle, Arctic Blaze, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Bright, August Fire, August Glo, August Lion, August Pearl, August Red, August Sweet, Bright Pearl, Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Burnecteleven (Summer Flare® 30), Burnectfifteen (Summer Flare® 27), Burnectseventeen (Summer Flare® 32), Candy Gold, Candy Pearl, Crimson Sweet, Diamond Ray, Early Red Jim, Fire Pearl, Fire Sweet, Giant Pearl, Grand Bright, Grand Candy, Grand Pearl, Grand Sweet, Honey Blaze, Honey Dew, Honey Diva, Honey Fire, Honey Kist, Honey Rose, Honey Royale, July Bright, July Pearl, July Red, June Ice, Kay Pearl, La Pinta,

Larry's Red, Late Red Jim, Mike's Red, Orange Honey, Prima Diamond IX, Prima Diamond X, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Prince Jim 3, Raspberry Jewel, Red Baron 2, Red Bright, Red Diamond, Red Glen, Red Jim, Red Pearl, Regal Pearl, Regal Red, Ruby Bright, Ruby Diamond, Ruby Pearl, Ruby Sweet, Saucer, September Bright (26P-490), September Free, September Red, Signature, Snow Pearl, Sparkling June, Spring Bright, Spring Pearl™, Spring Sweet, Sugar Pearl™, Sugarine, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Valley Sweet, Zee Glo or Zephyr variety nectarines unless:

(i) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 76 nectarines, except for Peento-type nectarines.

(7) During the period April 1 through May 31 of each fiscal year, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(7)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines, except for Peento-type nectarines.

(8) During the period June 1 through June 30 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D

standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(8)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 84 nectarines, except for Peento-type nectarines.

(9) During the period July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 76 nectarines, except for Peento-type nectarines.

(b) The following procedure shall be used in determining whether nectarines meet the minimum size requirements specified for each size category in this section applying a 16-pound sample. A sample consisting of one-half of the number of fruit specified for a 16-pound sample for a particular size category shall be used, provided such sample weighs at least eight pounds. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit shall be used to determine the sample weight. If a sample fails with respect to minimum size requirements on the basis of an 8-pound sample, a 16-pound sample shall be used to determine if the fruit meets the minimum size requirements.

(c) *Container tolerances.* The contents of individual packages in the lot are subject to the following limitations,

provided the averages for the entire lot are within the tolerances specified in this part:

(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages shall have not more than double the tolerance specified.

(2) For packages which contain 10 pounds or less, individual packages are not restricted as to the percentages of defects.

(d) As used herein, *U.S. No. 1, mature*, and *standard pack*, mean the same as defined in the United States Standards for Grades of Nectarines [7 CFR 51.3145 through 51.3160]; and *No. 22D standard lug box* means the same as defined in section 1380.19 (17) of the "Regulations of the California Department of Food and Agriculture". *Well matured* means a condition distinctly more advanced than *mature*.

[59 FR 15838, Apr. 5, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 917.356, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

DEFINITIONS

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917.4	Fruit.
917.5	Grower.
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917.7	Handler.
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ADMINISTRATIVE BODIES

917.16	Designation of Control Committee.
917.17	Nomination of shipper members of the Control Committee.